



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1209]

Certain Movable Barrier Operator Systems and Components Thereof

Commission Decision to Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Target Date Extension

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, as amended.

The Commission requests briefing from the parties on certain issues under review, as set forth in this notice. The Commission also requests briefing from the parties, interested persons, and government agencies on the issues of remedy, the public interest, and bonding. The Commission has further determined to extend the target date until February 3, 2022.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 10, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Overhead Door Corporation of Lewisville, Texas and GMI Holdings Inc. of Mount Hope, Ohio (collectively, “Complainants”). See 85 FR 48264-65 (Aug.

10, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of U.S. Patent Nos. 8,970,345 (“the ’345 patent”); 9,483,935 (“the ’935 patent”); 7,173,516 (“the ’516 patent”); 7,180,260 (“the ’260 patent”); 7,956,718 (“the ’718 patent”); and 8,410,895 (“the ’895 patent”). *See id.* The notice of investigation names The Chamberlain Group, Inc. of Oak Brook, Illinois (“Respondent”) as the respondent in this investigation. *See id.* The Office of Unfair Import Investigations is not a party to the investigation. *See id.*

On February 10, 2021, the Commission terminated the investigation as to the ’516 patent based on the withdrawal of the allegations in the complaint as to that patent. *See Order No. 10* (Jan. 19, 2021), *unreviewed by Comm’n Notice* (Feb. 10, 2021).

On April 26, 2021, the ALJ issued an ID granting Complainants’ motion for summary determination that the economic prong of the domestic industry requirement is satisfied. *See Order No. 12* (April 26, 2021), *unreviewed by Comm’n Notice* (May 26, 2021).

On September 14, 2021, the ALJ issued the FID finding a violation of section 337 based on the infringement by Respondent of all of Complainants’ asserted patents. Specifically, the FID finds that: (1) the asserted patents are all infringed by Respondent’s accused products and redesigned products; (2) the domestic industry products practice the asserted patents; and (3) the asserted patents not invalid under 35 U.S.C. 101, 102, or 103.

The FID also includes a recommended determination (“RD”) recommending, should the Commission affirm and find a violation of section 337, that the Commission issue: (1) a limited exclusion order against certain movable barrier operator systems and components thereof that are imported into the United States, sold for importation, and sold within the United States after importation, by the Respondent; and (2) a cease and desist order against the Respondent. The RD also recommends that the Commission set a bond during the period of Presidential review in an amount of 100 percent of the entered value of the movable barrier operator systems imported

by or on behalf of the Respondent.

On September 27, 2021, the Respondent filed a petition for Commission review of certain aspects of the FID. Specifically, Respondent requested that the Commission review, for one or more of the asserted patents, the FID's findings with respect to: (1) claim construction; (2) infringement; (3) invalidity for anticipation or obviousness under 35 U.S.C. 102 or 103, respectively; (4) invalidity for patent ineligibility under 35 U.S.C. 101; and/or (5) the technical prong of the domestic industry requirement. On October 5, 2021, Complainants filed a response in opposition to the Respondent's petition.

Having examined the record of this investigation, including the FID and the parties' submissions, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review the following of the FID's findings: (1) with respect to the '345 and '935 patents, construction of the claim term "on each of the channels . . .," the related infringement findings as to the accused products and redesigns, and the validity of the asserted claims of the '345 and '935 patents over U.S. Patent Application Publication No. 2006/0109078 (RX-44) ("Keller"); (2) with respect to the '260 patent, construction of the claim term "user input of . . . limit values," the related infringement findings, and patent eligibility under 35 U.S.C. 101; and (3) with respect to the '718 and '895 patents, construction of the claim terms "obstruction detection unit" and "obstruction detector," the related infringement findings as to the accused products and redesigns, and patent eligibility under 35 U.S.C. 101. The Commission has determined not to review the remainder of the FID.

The Commission has also determined to extend the target date until February 3, 2022.

In connection with its review, the Commission requests the parties to brief their positions with reference to the applicable law and the evidentiary record regarding only the following issues:

1. Explain why the claim phrase "on each of the channels, . . . multiple copies of a message" in the '935 patent and the

claim phrase “on each of the channels, . . . to a next one of the multiple channels” in the ’345 patent require construction and why the plain language of the claim phrases is inadequate to resolve the parties’ disputes as to infringement and/or invalidity over Keller.

2. Assuming that the Commission determines that the claim phrase “on each of the channels, . . . multiple copies of a message” in the ’935 patent and the claim phrase “on each of the channels, . . . to a next one of the multiple channels” in the ’345 patent require no construction and that the plain meaning applies, please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.
3. Assuming that the Commission determines that the claim phrase “on each of the channels, . . . multiple copies of a message” in the ’935 patent should be construed to mean “a transmitter configured to automatically transmit multiple copies of a message upon actuation of the transmitter on each of two or more different channels,” please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.
4. Assuming that the Commission determines that the claim phrase “on each of the channels, . . . to a next one of the multiple channels” in the ’345 patent should be construed to mean “a transmitter operatively connected to automatically

transmit multiple copies of a message upon actuation of the transmitter on one of multiple channels prior to switching the transmitter at a transmitter-switching rate, to a next one of the multiple channels,” please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.

5. Explain why the claim phrase “user input of . . . limit values” in the ’260 patent requires construction and why the plain language of the claim phrase is inadequate to resolve the parties’ disputes as to infringement.
6. Assuming that the Commission determines that the claim phrase “user input of . . . limit values” in the ’260 patent requires no construction and that the plain meaning applies, please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement.
7. Assuming that the Commission determines that the construction of the claim terms “obstruction detection unit” and “obstruction detector” do not require “enabling a response to an obstruction,” and should be construed as “device or circuitry capable of detecting and signaling an obstruction in the opening closable by the barrier,” please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement.

In addition, in connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from

entry into the United States, and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In that regard, the Commission requests briefing on each of the aforementioned public interest factors. The parties are requested to also brief their positions on the following questions:

1. Please include in your analysis of the competitive conditions in the United States economy and U.S. consumers, a fulsome explanation, supported by evidence as to whether, and to what extent, the garage door openers and gate operators of other suppliers can be substituted for CGI's accused products, including whether potential substitutes are made in the United States or overseas. Please include in your analysis, a quantitative analysis of the availability of such

substitutes to U.S. consumers both in the near term and in the future.

2. With respect to CGI's assertion that it holds a large share of the U.S. market for garage door openers and gate operators, please identify what percentage share of the U.S. market the accused products comprise of the total market shares asserted by CGI.
3. Please include in your analysis of the public health and welfare, a fulsome explanation, supported by evidence, as to whether and to what extent exclusion of CGI's accused products and substitution of competitors' products raise safety and security concerns for U.S. consumers.
4. CGI contends in its public interest statement that "there was no discovery or findings by the ALJ regarding public interest issues and the record is devoid of adversarially-tested direct evidence that OHD or others have the manufacturing capacity to immediately supply domestic demand if CGI is excluded from the market or the harm that the construction industry and consumers would suffer." Please provide any evidence that supports or disproves CGI's assertion, including how your analysis is to be considered under each applicable statutory public interest factor.
5. If CGI requests a repair/warranty exemption from any remedial orders, please cite and discuss the evidence of record supporting such a request.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions limited to the briefing questions above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the RD by the ALJ on remedy, the public interest, and bonding. Complainants are also requested to identify the form of remedy sought and to submit proposed remedial orders for the Commission's consideration in their initial written submissions. Complainant is further requested to state the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Initial written submissions and proposed remedial orders must be filed no later than close of business on **December 13, 2021**. Reply submissions must be filed no later than the close of business on **December 20, 2021** and must be limited to issues raised in the initial written submissions. Initial written submissions may not exceed 70 pages in length, exclusive of any exhibits, while reply submissions may not exceed 45 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR

210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (“Inv. No. 337-TA-1209”) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission’s vote for this determination took place on December 6, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 6, 2021.

Lisa Barton,

Secretary to the Commission.

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